Supreme Court of the United States

OCTOBER TERM, 1942.

No. 581.

SOUTHLAND GASOLINE COMPANY, PETITIONER,

VS.

J. W. BAYLEY, HENRY V. BLOOM, G. C. KENDALL, OWEN REDING AND W. J. BAYLEY, RESPONDENTS.

BRIEF OF RESPONDENTS.

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STATEMENT OF THE CASE.

On January 2, 1942, respondents herein, plaintiffs below, filed suit in the United States District Court for the Western District of Arkansas, to recover money they alleged was due them under Sections 6 and 7 of the Fair Labor Standards Act of 1938.

In their complaint, among other things, they allege that on October 24, 1938, and thereafter up to October 15, 1940, the Southland Gasoline Company, petitioner herein, was a private carrier and engaged in interstate commerce, and that they as employees of said petitioner company were engaged in interstate commerce and that they were subject

to the provisions of Sections 6 and 7 of said Act providing for minimum wages and maximum hours and allege that they have not been paid the amount to which they were entitled under the provisions of said Act (Rec. pp. 1-16).

On January 23, 1942, petitioner, defendant below, filed motion to dismiss the claims of said plaintiffs (Rec. pp. 17-18).

On February 27, 1942, the said District Court sustained petitioner's motion to dismiss respondents' claims for overtime compensation under Section 7 of said Act, holding that Section 13 (b) (1) of said Act excluded respondents from the provisions of Section 7 of said Act by the provision that Section 7 shall not apply with respect to any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act of 1935, and that the fact that the Interstate Commerce Commission did not make a finding that a need existed to establish qualifications and maximum hours of service until May, 1940, was unimportant; and that the power to regulate such carriers was not dependent upon a prior finding of a need to regulate; and that the phrase, "if need therefor is found," is not a condition precedent to the exercise of the power granted the Commission by the Motor Carrier Act (Rec. pp. 19-21).

Respondents prosecuted their appeal from the decision of the District Court to the United States Circuit Court of Appeals for the Eighth Circuit. On November 2, 1942, the Circuit Court of Appeals rendered its decision, holding that until the Interstate Commerce Commission made a finding of necessity of regulation of private carriers with respect to matters specified in the Motor Carrier Act of 1935, it was without power to prescribe either qualifications or maximum hours for the employees of such carrier, and reversed the decision of the District Court and remanded the same (Rec. pp. 23-27).

POINTS ARGUED AND AUTHORITIES CITED.

Did the Interstate Commerce Commission have power to establish qualifications and maximum hours of service, pursuant to Section 204 of the Motor Carrier Act of 1935, for employees of private carriers by motor vehicle engaged in interstate commerce during the period of time between October 24, 1938, and May 1, 1940?

It is the contention of respondents that the phrase, "if need therefor is found," as used in Section 204 of the Motor Carrier Act, is a condition precedent to the exercise of power by the commission to establish for private carriers requirements and to prescribe qualifications and maximum hours of service for employees of private carriers.

AUTHORITIES.

Fair Labor Standards Act, Sections (7), 13 (b) (1).

Motor Carrier Act of 1935, Section 204.

Proceedings of Interstate Commerce Commission, MC-3, Division No. 5.

Administrator's Interpretative Bulletin No. 9, Paragraph 5.

Panama Refining Company v. *Ryan*, 293 U. S. 388-431, 55 S. Ct. 241.

United States v. *B. & O. Ry. Co.*, 293 U. S. 454, 55 S. Ct. 268.

Mahler v. *Eby*, 264 U. S. 32, 44 S. Ct. 283.

Wichita R. R. & Light Co. v. *Public Utilities Co.*, 260 U. S. 48.

Fleming v. *Hawkeye Pearl Button Co.*, 113 F. 2d 52.

United States v. *Darby*, 312 U. S. 100, 61 S. Ct. 451.

Bowie v. *Gonzalez*, 117 F. 2d 11.

United States v. *American Trucking Ass'n*, 310 U. S. 534.

Norwegian Nitrogen Prod. Co. v. *United States*, 288 U. S. 294, 324, 325, 53 S. Ct. 350.

Price v. *Forrest*, 173 U. S. 410.

United States v. *Katz*, 271 U. S. 354.

Bumpus v. *Continental Baking Co.*, 124 F. 2d 549.
Reck v. *Zarnocay*, 33 N. Y. 2d 582.
Morris Canal Co. v. *Baird*, 239 U. S. 126, 60 L. Ed. 177.
Wood v. *Central Sand & Gravel Co.*, 33 F. Supp. 40.

ARGUMENT.

"Emphases are supplied."

The determination of the question involved in the case at bar rests upon the correct construction and interpretation of section 13 (b) (1) of the Fair Labor Standards Act of 1938 and section 204 of the Motor Carrier Act of 1935.

Section 13 (b) (1) of the Fair Labor Standards Act is as follows:

> (b) "The provisions of section (7) shall not apply with respect to (1) *any employee* with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act."

Section 204 of the Motor Carrier Act of 1935 is as follows:

> "(a) Powers and duties generally." It shall be the duty of the Commission:
>
> (1) "To regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications, and maximum hours of service of employees, and safety of operations and equipment."
>
> (2) "To regulate contract carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts,

and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operations and equipment."

(3) "To establish for private carriers of property by motor vehicle, *if need therefor is found*, reasonable requirements to promote safety of operation, *and to that end prescribe* qualifications and maximum hours of service of employees, and standards of equipment. *In the event such requirements are established*, the term, 'motor carrier,' shall be construed to include private carriers of property by motor vehicle in the administration of section 304 (c), 305, 320, 322 (a), (b), (d), (f) and (g), and 324 of this chapter."

A careful reading and analysis of these two statutes and a comparison of subsections (1), (2) and (3) of the Motor Carrier Act will reveal that Congress determined for itself the necessity for regulating common and contract carriers. It did not determine the necessity of regulating private carriers but left the determination of that question to the Interstate Commerce Commission. The three subsections of said act, read together, clearly show that Congress intended that the power of the Commission to regulate private carriers should depend upon a formal finding of need therefor. Section 13 (b) (1) of the Fair Labor Standards Act evidently is not limited to the general power or jurisdiction of the Interstate Commerce Commission, but to the restricted or limited power as restricted and limited in subsection (3) of the Motor Carrier Act. The Circuit Court of Appeals discussed these statutes in its opinion and we refer to the same here. Rec. pp. 23-27.

Respondents respectfully urge that the language of subsection (3) of the Motor Carrier Act is clear, unambiguous and definite. The phrase "if need therefor is found" constitutes a condition which must be complied with before the Commission has any power to prescribe qualifications and maximum hours of service for private carriers. Congress must have intended that this phrase be given mean-

ing, because it is conspicuously absent from the subsections (1) and (2) of the Act. Congress evidently had this same interpretation in mind when writing section 13 (b) (1) of the Fair Labor Standards Act, for it is obvious Congress did not intend that the hundreds of thousands of employees of private carriers engaged in interstate commerce should be denied the protection of both the Fair Labor Standards Act and the Motor Carrier Act, and thus be subject to whatever oppressive and excessive hours of labor their employers should choose to impose upon them without any redress from any source whatsoever.

The purpose of the Fair Labor Standards Act is to include within its protection every employee engaged in interstate commerce or in the production of goods for interstate commerce except those specifically exempted.

Bowie v. *Gonzalez*, 117 F. 2d 11.

Where a legislative body invests an administrative body or agency of the government with power to act on or in accordance with a hearing or a finding, such delegated power does not come into existence until the hearing or finding is had or the determination is made, and until such hearing or finding has been had or made such action is jurisdictional and action without it is void.

Panama Refining Co. v. *Ryan*, 293 U. S. 388-431.
United States v. *B. & O. Ry. Co.*, 293 U. S. 454.
Mahler v. *Eby*, 264 U. S. 32, 44 S. Ct. 283.
Wichita R. R. & Light Co. v. *Public Utilities Commission*, 260 U. S. 48, 43 S. Ct. 55.

The general rule of construction of a statute of this nature is that coverage should be broadly interpreted and exemptions should be narrowly interpreted, and such statute being remedial the employer must bring himself within both the letter and the spirit of the exemption, since exemptions are subject to a strict construction.

Fleming v. *Hawkeye Pearl Button Co.*, 113 F. 2d 52.

Morris Canal Co. v. *Baird*, 239 U. S. 126, 60 L. Ed. 177.

Wood v. *Central Sand & Gravel Co.*, 33 F. Supp. 40.

United States v. *Darby*, 312 U. S. 100, 61 S. Ct. 451.

The Administrator's interpretations and rulings should be given great weight. In Interpretative Bulletin No. 9, paragraph 5, the Administrator construes the exemption not to include employees of private carriers until the Interstate Commerce Commission makes a finding of need to regulate such carriers.

United States v. *American Trucking Ass'n*, 310 U. S. 534.

Norwegian Nitrogen Prod. Co. v. *United States*, 288 U. S. 294, 324, 325, 53 S. Ct. 350.

Respondents respectfully urge that the phrase, "if need therefor is found," is a condition precedent to the power of the Commission to prescribe qualifications and maximum hours of service for employees of private carriers, and that the decision of the Circuit Court of Appeals is correct and should be affirmed.

Respectfully submitted,

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